IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO. 3386 OF 1993

SHRI SURYAWANSHI ROHIDAS GYANOBA
ADULT, OCCU.SERVICE, R/AT 624, LIMAYE
WADA, GANESH PETH, BHOR PUNE. ... PETITIONER.
VERSUS
BHOR EDUCATION SOCIETY AT & POST
BHOR, DISTRICT PUNE AND ORS. ...RESPONDENTS.

MR. A.M.JOSHI WITH MR. S.D.RAIRIKAR FOR PETILTIONER.
MR. S.V.PITRE AND P.K.SARAF WITH M.M.WADEKAR FOR RESPONDENT NO.1.
MR. PRAFULLA SHAH FOR RESPONDENT NO.10.
MR. R.M.PATNE AGP FOR RESPONDENT NO.1 AND 19.
NONE FOR RESPONSDENT; NOS. 2 TO 9 AND 1 TO 17, THOUGH SERVED.

CORAM : A.P. DESHPANDE, J.
DATE : January 16, 2007.

JUDGMENT

1. The Respondent No. 1 Bhor Education Society, at the relevant point of time was administering 4 secondary schools, out of which, two were aided and the rest were unaided. The aided schools were by name R. R. Vidyalaya, Bhor, Pune and Sarvale Vidyalaya, Saravale, Bhor, District PUne. The present petitioner and respondent Nos. 2 to 17 were working as assistant teachers in aided schools. Under the rules regulating the service conditions, the management is under an obligation to maintain a common seniority list. In the combine seniority list so prepared, respondent Nos. 2 to 17 were shown senior to the petitioner, which fact is undisputed. The petitioner belong to Scheduled Caste category (hereinafter referred to as SC category) whereas respondent Nos. 2 to 17, except respondent No. 10, belong to open category. Respondent No. 10 belong to N.T. category and he too had claimed the promotional post of Headmaster in R.R. Vidyalaya on the basis of seniority alongwith the other respondent Nos. 2 to 17. The Management has reserved the post of Head Master for SC Category in R.R. Vidyalaya. With a view to appoint SC category candidate in the post of Headmaster, Management-Respondent No.1 passed a resolution to that effect and promoted the petitioner to the post of Headmaster. The promotion was granted subject to grant of approval by the Education Officer.

. Aggrieved by the grant of promotion to the petitioner, the Respondent Nos. 2 to 17, filed appeal before the Presiding Officer, School Tribunal.

2. The contentions raised in the memo of the appeal are two fold :-

i) that already SC candidate has been appointed

in the other school as Head Master and hence,
the petitioner could not have been promoted as Head Master in R.R.Vidyalaya;

ii) the second ground was that the petitioner has been straight a way promoted to the post of Headmaster without being appointed either as a Supervisor or Assistant Headmaster and grant of jumping promotion is impermissible.

3. The Tribunal has allowed the appeal filed by the Respondent Nos. 2 to 17, mainly on the ground that the post of the Headmaster in the other aided school was already occupied by a person belonging to reserve category and on account of grant of promotion to the petitioner, the same would result in providing for 100 % reservation. The following observations form the basis of the Judgment, delivered by the School tribunal :-

"... It is contended by the respondents that out of the two posts of Head, one post is already been allotted to employee belonging to S.C. category, which amounts to 50% reservation. The respondents have not denied that the Headmaster of the other schools belongs to S.c. Category."

4. The Tribunal has not dealt with the other submission made by the Respondent Nos. 2 to 17 that the promotion granted to the petitioner is bad in law as the same tentamounts to granting jumping promotion.

5. Dealing with the second issue first, suffice it to refer to Rule 3, which lays down that a person to be appointed a Headmaster in a secondary school shall be graduate possessing Bachelor Degree in teaching or Education of a Statutory University or any other qualification, recognized by the Government, as equivalent thereto and possessing not less than five years' total full time teaching experience after graduation in a secondary school or a Junior College of Education out of which at least two years' experience shall be after acquiring Bachelor's degree in teaching or education.

. Sub rule (3) then provides that the Management of a school, including a night school, shall fill in the post of Headmaster by appointing senior most member of the teaching staff.

6. There is no requirement under the Rule that unless and until a person is appointed as a Supervisor or Assistant Headmaster,he cannot be appointed to the post of Headmaster by promotion. Ordinarily senior most person is required to be appointed and thus, he is usually the assistant Headmaster, but when a post is required to be filled in, on the basis of reservation, by applying a roster, the teacher so promoted need not be from cadre of Assistant Headmaster. A senior most teacher is to be promoted subject to the provisions dealing with reservation. As there is no bar or prescribed eligibility criteria that the person must first be appointed as an Assistant Headmaster and then and then only he could be promoted to the post of Head

Master. No valid objection could be taken to the promotion of the petitioner, directly to the post of Head Master. The said submission, canvassed before the Tribunal, was thus devoid of any merit and without substance and does not carry the case of the respondent Nos. 2 5o 17 any further.

7. Reverting back to the first ground, on which the Appeal has been allowed, which is to the effect that in the other school as well a person from SC category has been appointed and hence the promotion granted to the petitioner was bad in law. Suffice it to say that this Court had dismissed the writ petition summarily on the same count and aggrieved thereby, the present Petitioner filed SLP in Supreme Court. In Supreme Court, it was canvassed that the entire matter was proceeded on an erroneous factual position that there was already one post of Headmaster occupied by SC Category teacher. It was then asserted that barring the petitioner, no other person was appointed as Headmaster from SC category and hence, there was no question of the percentage of the reservation exceeding beyond the permissible limits on promotion of the petitioner. The Supreme Court, in view of the said contention, remanded the matter to High Court for consideration of the said submissions and for deciding the petition afresh.

. After remand of the petition, the Management has filed an affidavit on record stating that at the relevant time, when the petitioner was promoted to the post of Headmaster, there was no person from SC Category appointed as Headmaster in he other school. Thus, the assertion of the petitioner before the Supreme Court that the matter was proceeded on an erroneous factual position, stands substantiated by the affidavit of the Secretary of the Respondent NO.1, dated 14th December, 2005. Though the petitioner has averred in the writ petition that no other person from SC category was appointed as Headmaster at the relevant point of time in the other school, the said assertion = has not been denied by filing an affidavit by any of the respondents from Sr.No. 2 to 17. If this be so, it is obvious that the Tribunal has proceeded to allow the appeal filed by Respondent No. 2 to 17 on erroneous factual position and therefore, the Judgment and Order, passed by the Tribunals deserves to be quashed and set aside solely on that count.

8. It may not be out of place at this juncture to observe that no one is representing the contesting respondent Nos. 2 to 17,except Respondent No.10, who belongs to N.T. Category. The Respondent No. 10 is represented by Counsel and he submits that during the pendency of the petition, he has already been promoted to the post of Headmaster. Some of the Respondents such as respondent Nos. 2,3,5,12 and 14 to 17 have retired from service whereas respondent Nos. 4,6 and 10 are already promoted at a latter point of time to the promotional post. It is also relevant to note that right since the date of promotion, the petitioner has been working as a Headmaster. As this Court had granted interim stay. Having regard to the totality of the facts and circumstances and having found that the

Order passed by the Tribunal is unsustainable, the petition deserves to be allowed and I proceed to allow the same.

In the result, the impugned Order passed by the Tribunal, dated 29.7.1993 in Appeal No. 16 of 1992 is, hereby, quashed and set aside.

Rule is made absolute in above terms with no Order as to costs.

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[A.P.DESHPANDE, J.]